

MEMORANDUM

February 22, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: MARK A. WEINSTEIN
Veatch, Carlson, Grogan & Nelson

OWEN L. GALLAGHER
Principal Deputy County Counsel
General Litigation Division

RE: Brandon Yepez, a minor by and through his Guardian Ad Litem,
Guadalupe Ponce v. County of Los Angeles
Los Angeles Superior Court, Central District Case No. BC273908

DATE OF
INCIDENT: July 14, 2001

AUTHORITY
REQUESTED: \$2,500,000, Plus Assumption of the Medi-Cal Lien Not to Exceed \$32,207


COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

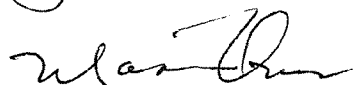
☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on March 7, 2005

SUMMARY

This is a recommendation to settle for \$2,500,000, the medical negligence lawsuit brought by Brandon Yepez for the injuries he sustained as the result of treatment he received at MacLaren Children's Center on July 14, 2001. The State, having paid \$32,207 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by the County.

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On July 12, 2001, at about 9:00 p.m., Brandon Yepez, a 4-year-old boy with a genetic disorder affecting his ability to metabolize proteins (methylmalonic acidemia [MMA]), was taken into protective custody by the Department of Children and Family Services (DCFS). Individuals with MMA are at risk of developing a high level of acid in their blood (metabolic acidosis), which, if not timely treated, will result in irreversible brain injury and death. Because of concerns about Brandon's MMA, he was taken to Children's Hospital of Los Angeles (cross-defendant private facility) for an examination and medical clearance.

On July 13, 2001, at about 3:25 a.m., Brandon was medically cleared by Children's Hospital for placement, and discharged. At the time of Brandon's discharge, the DCFS social worker was given instructions that Brandon should be returned to the Emergency Room at Children's Hospital if Brandon exhibited signs of fever, dehydration, or vomiting, which may be signs of a deterioration due to MMA.

At about 5:00 a.m., Brandon was transferred to MacLaren Children's Center (MCC), a DCFS facility, and placed in the infirmary unit staffed by the Department of Health Services (DHS) under a Memorandum of Understanding between DHS and DCFS.

On July 14, 2001, at 6:00 a.m., it was noted that Brandon had an episode of vomiting. At 10:45 a.m., it was again noted that Brandon had vomited. Medical personnel determined that Brandon's condition did not warrant transferring him to Children's Hospital at that time.

At 3:00 p.m., medical personnel were informed that Brandon had again vomited. An order was given that Brandon should be transferred, by ambulance,

to the Emergency Room at Children's Hospital for further evaluation and treatment. However, rather than transporting Brandon to Children's Hospital by ambulance, Brandon was placed in a private vehicle at about 4:10 p.m., and driven to Children's Hospital by a DCFS staff member.

At 4:50 p.m., Brandon arrived at Children's Hospital. Medical personnel determined that Brandon was weak, lethargic, and suffering from an abnormally fast heart rate, and abnormally low blood pressure. An analysis of Brandon's blood indicated that he was suffering from severe metabolic acidosis resulting from deterioration due to his MMA.

On July 20, 2001, Brandon was discharged. He currently suffers from profound brain damage, which was subsequently determined, and which, medical experts will attribute to the 1-hour-and-50-minute delay in timely treatment of his acidotic condition resulting from the failure to transport Brandon to Children's Hospital by ambulance, as ordered, on July 14, 2001.

DAMAGES

If this matter proceeds to trial, the claimant will likely seek the following:

Brandon Yepez,	
Future Medical Care	\$4,542,863
Pain and Suffering	<u>\$1,000,000</u>
TOTAL	\$5,542,863

The proposed settlement includes:

Brandon Yepez,	
Cash Settlement	\$2,011,000
Attorneys Fees	\$ 439,000
Costs of Litigation	<u>\$ 50,000</u>
TOTAL	\$2,500,000

A portion of the recommended settlement may be directed by claimants to be used to purchase an annuity. The amount and structure of the annuity has not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

Expenses incurred by the County of Los Angeles in the defense of this case through February 18, 2005, are attorneys fees of \$244,229 and \$56,399 in costs.

This matter involved complex legal issues surrounding the obligations and duties of social workers accepting responsibility of medically disabled minor children taken into protective custody, and medical-legal issues surrounding the care and treatment rendered by medical personnel and custodial staff at MacLaren Children's Center, and the distinct standards of care applicable to each. In addition, the County brought a cross-complaint against Children's Hospital for purposes of determining whether there may have been a breach of the standard of care by medical personnel which contributed to the injuries observed here. In addition to the normal discovery in such matters, it was necessary to take numerous depositions, including experts in emergency medicine, neurology, pediatric neurology, life-care planning, and economics. Due to the inability of the parties to reach a reasonable settlement amount until shortly before the date on which the trial was to start, it was necessary for the County to be completely prepared for trial, including all motions, opposition to motions, exhibits, jury instructions, and witness preparation.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$2,500,000
County Attorneys Fees and Costs	\$ 300,000
Medi-Cal Lien	<u>\$ 32,207</u>
TOTAL	\$2,832,207

EVALUATION

Medical experts will be critical of the failure to transport Brandon Yopez to Children's Hospital by ambulance, as ordered by medical personnel on July 14, 2001. This failure resulted in a 1-hour-and-50 minute delay in transporting Brandon to Children's Hospital, allowed a further deterioration of Brandon's condition, and is directly responsible for the results observed here.

We join with our private counsel, Veatch, Carlson, Grogan & Nelson, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$2,500,000, and payment of the Medi-Cal lien in the amount of \$32,207.

The Department of Health Services concurs in this settlement.